



Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS-SC-21-0061]

Washington Apricots; Termination of Marketing Order

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a recommendation from the Washington Apricot Marketing Committee (Committee) to terminate the Federal marketing order regulating the handling of apricots grown in designated counties in Washington (Marketing Order No. 922). The Committee determined the marketing order is no longer necessary to maintain orderly marketing conditions and unanimously recommended its termination. Following the Committee's recommendation, the Agricultural Marketing Service (AMS) suspended the remaining reporting and assessment collection requirements under the marketing order while it considered termination of the marketing order. After reviewing the Committee's recommendation and other information submitted, AMS determined that the marketing order no longer tends to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937. If implemented, this proposed rule would remove Marketing Order No. 922 from the Code of Federal Regulations.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or via internet at:

<https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <https://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public on the internet at the address provided above. Please be advised that the identity of individuals or entities submitting comments will be made public.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724 or Email: Joshua.R.Wilde@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491 or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington. Part 922 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of producers and handlers operating within the production area.

AMS is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with the Department of Agriculture (USDA) a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would terminate the Order regulating the handling of apricots grown in designated counties in Washington. Following its meeting on May 11, 2021, the Washington Apricot Marketing Committee (Committee) unanimously recommended this action after determining the Order is no longer necessary to maintain orderly marketing conditions. AMS suspended, indefinitely, reporting and assessment collection requirements under the Order while it considered the Committee's recommendation and information submitted (87 FR 21741). After reviewing the Committee's recommendation, years without marketing program activity, the decline in apricot production, and the decision to indefinitely suspend reporting and assessment collection requirements, AMS determined that the Order no longer tends to effectuate the declared policy of the Act. This proposed rule invites comments on proposed termination of the Order and, if implemented, would remove the Order from the Code of Federal Regulations.

Section 922.64(b) of the Order provides that United States Secretary of Agriculture (Secretary) may terminate or suspend any or all provisions of the Order when a finding is made that the Order does not tend to effectuate the declared policy of the Act. In addition, section 608c(16)(A) of the Act provides that the Secretary terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act.

The Order has been in effect since 1957 and has provided the apricot industry in Washington with authority for grade, size, quality, maturity, pack, and container regulations, as well as authority for mandatory product inspection.

The Committee, which locally administers the Order, meets regularly to consider recommendations for modification, suspension, or termination of the Order's regulatory requirements. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS reviews Committee recommendations,

including information provided by the Committee and from other available sources, and determines whether modification, suspension, or termination would tend to effectuate the declared policy of the Act.

In 2006, the Committee unanimously recommended AMS suspend container regulations after determining they were no longer necessary to ensure orderly marketing and that suspension would provide greater flexibility to handlers for packing and shipping apricots. Following the Committee's recommendation, AMS suspended container regulations for apricots for one year in 2006 (71 FR 16979), and subsequently extended that suspension indefinitely in 2007 (72 FR 16263).

In 2013, the Committee unanimously recommended AMS suspend handling regulations after determining the cost of complying with the Order's handling and inspection requirements outweighed its benefits to both producers and handlers of apricots. Based on the Committee's recommendation, AMS issued an interim rule suspending the handling regulations for apricots on October 23, 2013 (78 FR 62963). A final rule affirming the indefinite suspension published in the **Federal Register** on March 20, 2014 (79 FR 15539).

Following these regulatory suspensions, the Committee continued to levy assessments to maintain its functionality. The Committee believed that it should continue to fund its full operational capability, collect industry statistics on an ongoing basis, and maintain the program in the event market conditions warranted regulation.

On May 11, 2021, the Committee met and discussed current market dynamics, budget and assessments, and deliberated the continuance of the Order. During the meeting, the Committee discussed that the volume of apricots produced in Washington has declined over the years, and in 2020, the industry experienced a significant drop in crop produced from the prior year's production. In addition, management and

administrative costs to maintain the Order have also increased. Staff management hours includes a greater quantity of hours worked than in previous years.

The Committee discussed the alternative, that to maintain the Order would require an assessment rate increase of approximately over 300 percent, from \$2.86 to \$13.30 per ton. However, the Committee determined that the decrease in the 2020 crop suggests an overall decline in apricot production, and an assessment rate increase of over 300 percent would not benefit apricot producers and handlers. The Committee discussed that the industry has functioned without container and handling regulations for a combined period of more than 14 years. It was the belief of the Committee that the suspension of container and handling requirements had not adversely affected the marketing of Washington apricots and, therefore, terminating the Order would not negatively impact the industry. The Committee concluded that the Order is no longer necessary to maintain orderly marketing conditions and that the cost to maintain the Order outweighs its benefit to industry. Following this meeting, the Committee voted unanimously to terminate the Order.

On July 7, 2021, the Committee formally recommended AMS terminate the Order. In preparing to terminate the Order, the Committee recommended AMS suspend the collection of assessments and reporting requirements. The Committee also recommended a budget of expenditures of \$5,508 for the period beginning April 1, 2021, and ending with the termination of the Order. Following the Committee's recommendation, AMS suspended, indefinitely, the remaining reporting and assessment collection requirements under the Order while it considered the recommendation and information submitted by the Committee to terminate the Order. A proposed rule to suspend reporting and assessment collection requirements published in the **Federal Register** on November 23, 2021 (86 FR 66462). AMS received one comment that did not address the merits of the rule. Accordingly, no changes were made to the rule as

proposed and the final rule published on April 13, 2022 (87 FR 21741). The suspension of regulations, reporting requirements, and assessment collections continued while AMS evaluated the Committee's recommendation for terminating the Order. After reviewing the Committee's recommendation, years without marketing program activity, the decline in apricot production, and the decision to indefinitely suspend reporting and assessment collection requirements, AMS determined that the Order no longer tends to effectuate the declared policy of the Act.

This proposed rule is intended to solicit input and any additional information available from interested parties regarding whether the Order should be terminated. AMS will evaluate all available information prior to making a final determination on this matter. If implemented, this proposed rule would terminate the Order and the rules and regulations issued thereunder.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 315 growers of Washington apricots and approximately 8 apricot handlers in the production area subject to regulation under the Order. Small agricultural service firms (postharvest crop activities (except cotton ginning), NAICS code 115114) are defined by the Small Business Administration (SBA) as those having annual receipts of \$30,000,000 or less, and small agricultural producers (other non-citrus

fruit farming, NAICS code 111339) are defined as those having annual receipts of \$3,000,000 or less (13 CFR 121.201).

Based on USDA National Agricultural Statistics Service (NASS) data, and given the number of Washington apricot growers, average grower revenue is well below \$3,000,000. NASS's 2020 value of utilized Washington apricot crop production was \$3.866 million. Dividing the \$3.866 million crop value by 315 growers equals average annual receipts per grower of \$12,273. Thus, most Washington apricot growers would be considered small businesses under the SBA definition.

In addition, according to data from AMS's Market News, the estimated Washington apricot 2020 season average Free on Board (f.o.b.) shipper (handler) price per carton was approximately \$31.59 (for Washington apricots, 2-layer tray pack carton, all sizes, June-July 2020, midpoint of the "mostly low" and "mostly high" prices). With a standard Market News weight of 18 pounds per tray pack carton of apricots, the f.o.b. price was approximately \$1.755 per pound, (\$31.59 divided by 18 pounds), or \$3,510 per ton. The Committee reported that the industry shipped 1,628 tons for the 2020 season. Total 2020 estimated handler receipts are \$5.714 million (1,628 tons times \$3,510 per ton). Average annual receipts per handler are approximately \$714,000 (\$5.714 million divided by 8 handlers). Thus, most Washington apricot handlers would be considered small businesses under the SBA definition.

This rule proposes to terminate the Order, and the rules and regulations issued thereunder. Termination would remove the Order from the Code of Federal Regulations.

On July 7, 2021, the Committee made the recommendation to terminate the Order. The alternative, to maintain the Order, would require the Committee to increase the assessment rate by approximately 300%, from \$2.86 to \$13.30 per ton. However, the 2020-2021 crop production was the smallest crop on record, and evidence suggests that this decline is a continuation of an industry trend.

In addition, the prior suspension of the container and handling regulations, effectuated by a separate rulemaking published on April 5, 2006 (71 FR 16979), has not adversely affected the marketing of Washington apricots in any of the subsequent years. AMS confirmed data from the past 7 years shows that apricots can be marketed from the production area in the absence of the Order's requirements without a negative economic impact on the industry.

After considering the alternative, the Committee concluded that regulating the handling of apricots under the Order is no longer necessary to ensure orderly marketing of Washington apricots, that the costs associated with the administration of the Order outweigh the benefits, and that termination of the Order would not have a negative impact on industry. Therefore, following its meeting on May 11, 2021, the Committee unanimously voted to terminate the Order. The suspension of regulations, reporting requirements, and assessments collections continued for an indefinite period while USDA evaluated the Committee's recommendation to proceed with the termination of the Order.

This proposed rule is intended to solicit input and other available information from interested parties on whether the Order should be terminated. AMS will evaluate all available information prior to making a final determination on this matter.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189 Fruit Crops. AMS will extract the remaining apricot marketing order-related forms from the forms package during the next three-year renewal process, should the Order be terminated.

This rule would effectuate the removal of reporting and recordkeeping requirements on apricot handlers, both small and large. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, AMS

has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meetings were widely publicized throughout the Washington apricot industry, and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Meetings were held virtually or in a hybrid style with participants having a choice on whether to attend in person or virtually.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the proposed termination of Marketing Order No. 922, which regulates the handling of apricots grown in designated counties in Washington. A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

Based on the foregoing, and pursuant to § 608c(16)(A) of the Act and § 922.64 of the Order, AMS is considering termination of the Order. If AMS decides to terminate the Order, trustees would be appointed to conclude and liquidate the Committee affairs and would continue in that capacity until discharged by AMS. In addition, AMS would notify Congress 60 days in advance of termination pursuant to § 608c(16)(A) of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922 –[REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601-674, the Agricultural Marketing Service proposes to remove part 922.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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